

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

SHAWN BROWN, individually and as)
mother and next friend of A.B., a minor,)
)
Plaintiffs,)
v.) CASE NO. 3:05-cv-810-F
) (WO)
WAL-MART STORES, INC.,)
ASSOCIATES HEALTH AND)
WELFARE PLAN,)
)
Defendant.)

ORDER

This action is presently before the court on Defendant Wal-Mart Stores, Inc., Associates Health and Welfare Plan's Motion to Strike (Doc. #9) the Plaintiffs' demand for trial by jury filed along with the Plaintiffs' complaint on July 25, 2005 (Doc. #1). Although Plaintiffs were given an opportunity to do so,¹ they have filed no objection to the motion. The Court has found adequate support for the motion² and, accordingly, it is hereby

ORDERED that the motion is GRANTED.

DONE this 17th day of October, 2005.

/s/ Mark E. Fuller
CHIEF UNITED STATES DISTRICT JUDGE

¹ See Doc. #10 (show cause order entered by the court on September 29, 2005).

² See *Blake v. Unionmutual Stock Life Ins. Co. Of Am.*, 906 F.2d 1525, 1526 (11th Cir. 1990) (following "overwhelming precedent" to find that a plaintiff is not entitled to a jury trial in an action to recover benefits under 29 U.S.C. § 1132(a)(1)(B)); *Chilton v. Savannah Foods & Indus., Inc.*, 814 F.2d 620, 623 (rejecting claim that a suit for benefits under § 1132(a)(1) should be tried to a jury); *Howard v. Parisian, Inc.*, 807 F.2d 1560, 1566-67 (11th Cir. 1987) (finding the Eleventh Circuit's position consistent with all circuits that have addressed the availability of a jury trial under § 1132(a)(1)).